

**JUN 26 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON**

**U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

WHITE CLOUD CONSULTING, INC.,

Plaintiff-Counter-Defendant-Appellee-  
Cross-Appellant,

v.

PROFESSIONAL STAFF LEASING  
CORPORATION,

Defendant-Counter-Claimant-Appellant-  
Cross-Appellee,

TERRY R. WHITE,

Counter-Defendant-Appellee-  
Cross-Appellant.

Nos. 02-35358 & 02-35427

D.C. No. CV-99-00376-MHW

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Idaho  
Mikel H. Williams, Magistrate Judge, Presiding

Argued and Submitted June 4, 2003  
Seattle, Washington

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Before: LAY,\*\* GOODWIN, and GOULD, Circuit Judges.

Professional Staff Leasing Corporation (“ProLease”) appeals the district court’s decision to dismiss its breach of fiduciary duty counterclaim against Terry White, the former Chief Executive Officer of White Cloud Consulting, Inc. (“White Cloud”). ProLease claims White breached his fiduciary duty by allowing an employee from another company to file a workers’ compensation claim under ProLease’s insurance policy. We find no error with the district court’s decision. ProLease did not prove it suffered any damage from the errant filing. It failed to show that its insurance rates climbed or rating standards changed because of White’s actions.

We also affirm the district court’s decision to deny White Cloud and ProLease attorneys’ fees. Both parties claim victory in their dispute over the promissory note. Neither party, however, can be characterized as the “prevailing party.” The district court ruled in favor of White Cloud by upholding the validity of the promissory note and rejecting ProLease’s counterclaims for fraud, negligent misrepresentation, and breach of contract. The district court ruled in favor of ProLease by offsetting the promissory note by \$612,772. Since neither party can

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\*\* The Honorable Donald P. Lay, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

claim total victory, the district court did not abuse its discretion by denying attorneys' fees. See Anderson v. Melwani, 179 F.3d 763, 766 (9th Cir. 1999) (stating district court has discretion to refuse to enforce a contractual attorneys' fees provision when awarding fees would be inequitable and unreasonable); cf. United States ex rel. A.V. DeBlasio Constr., Inc. v. Mountain States Constr. Co., 588 F.2d 259, 263 (9th Cir. 1978) (holding district court acted within its discretion by denying attorneys' fees when both parties acted improperly).

AFFIRMED.